

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 895 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BAROT BABULAL RUGHNATHBHAI THRO'P.O.A.ASHOKKUMAR S BAROT
Versus
THAKAR BHAVANJI JOITAJI

Appearance:

1. Civil Revision Application No. 895 of 2000
MR PK JANI for Petitioner No. 1
MR RM CHHAYA for Respondent No. 1
UNSERVED-REFUSED (R) for Respondent No. 1
RULE SERVED BY DS for Respondent No. 2-4
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/01/2004

ORAL JUDGEMENT

By filing this revision application, the petitioner who is defendant no.4 in Regular Civil Suit No.189 of 1996 has challenged the order passed by the

trial Court rejecting the prayer of the petitioner to accept his written statement on record. The respondent no.1 is the original plaintiff of Regular Civil Suit No.189 of 1996, which is pending in the court of the learned Civil Judge (J.D.) at Kadi. In the said suit on behalf of the present petitioner an application was submitted for allowing him to be joined as a party-defendant as initially he was not joined as a defendant in the suit. The trial Court allowed the said application and the petitioner was permitted to be joined as defendant no.4 in the aforesaid suit and that is how the petitioner was joined as one of the defendants in the said suit. It seems that after being joined as defendant no.4, he had not filed the written statement immediately. Subsequently, he preferred an application for allowing him to file the written statement. That application was resisted by the original plaintiff on the ground that the application was filed after a considerable delay. The learned Judge after hearing the concerned parties ultimately came to the conclusion that since the written statement was not submitted within stipulated time, as provided under Order 8 Rule 1 of CPC and since oral evidence has commenced, the application submitted by the petitioner - original defendant no.4 at exh.73 was required to be rejected and the same was rejected. This Civil Revision Application is filed against the said order.

The learned counsel for the petitioner submits that since the petitioner was not served with the summons of the Court after he was joined as defendant no.4 in the suit, he could not file the written statement within the stipulated time. It is submitted that in the interest of justice defendant no.4 may be permitted to file written statement as otherwise defendant no.4 may suffer irreparable injury. Though served, except the original plaintiff, no other defendants have appeared in the suit. The learned advocate Mr Chhaya for respondent no.1 original plaintiff states that the defendant no.4 was in fact negligent and has not filed the written statement promptly. However, he has not seriously opposed this revision application and has ultimately left the decision to this Court. Considering the facts and circumstances of the case, in my view, the trial Court had ample power to accept the written statement even by resorting to Section 151 of the Civil Procedure Code.

Mr Unwalla relied upon unreported decision of this Court in the case of Allauddin Chirajuddin Shaikh v/s Prakash Devendra Kapadia reported in 1988(1) GLH (UJ) 27 wherein the learned Judge of this Court has taken the

view that by not allowing defendant to file the written statement on the ground of lapse would cause serious prejudice to the defendant and ultimately this Court permitted the concerned defendant to file the written statement. In my view, in a given case, the Court can consider whether there was sufficient cause for not filing the written statement within stipulated time and the Court can resort to Section 151 of the Civil Procedure Code for the purpose of condoning the delay in taking the written statement on record. In any case, as none of the defendants has opposed this civil revision application and even the plaintiff has not seriously opposed this application, in my view, defendant no.4 is required to be permitted to file written statement before the trial Court so that ultimately the trial court can decide the matter after considering the pleas of the parties. Such written statement is ordered to be filed latest by 20th February, 2004. The trial court shall permit the petitioner-original defendant no.4 to file written statement and decide the suit on its own merits. This revision application is accordingly allowed. No order as to costs.

In the facts and circumstances of the case, hearing of the suit is expedited and trial court shall decide the suit latest by 30th August, 2004. Writ to be sent to the trial court forthwith.

(P.B. Majmudar, J.)

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